

REMARKS

Reconsideration of the present application in view of the above amendments and the following remarks is respectfully requested.

I. Status of the Claims

Claims 11-41 are pending in this application. In response to the Examiner's election requirement, the Applicant elected for prosecution the species including animal urine and calcium carbonate (claims 11-13, and 16-21 read on this species). Claims 14, 15, and 22-29 have been withdrawn from consideration as being directed to non-elected species. In the Office Action mailed on March 15, 2004, claims 11-13, 16, 17 and 21 were rejected under 35 U.S.C. §112 (claims 11 and 13 have been amended herein to overcome this rejection), claims 11 and 18-21 were rejected under 35 U.S.C. §102, and claims 11-13, 16 and 17 were rejected under 35 U.S.C. §103. Applicant has decided to no longer pursue claims directed to the elected species (calcium carbonate) in the present application. Instead, by this Amendment (which amends claims 11, 13 and 21 and adds claims 30-41) and the concurrently filed Request for Continued Examination under 37 C.F.R. §1.114, Applicant is pursuing claims directed to different species of the present invention.

II. Response to Cited Art

In the March 15, 2004 Office Action, the Examiner cited the following references in rejecting the pending claims: Aoki et al., United States Patent No. 5,043,425; Franklin et al., United States Patent No. 5,267,532; Japanese Patent Application No. 51034564; and Schiller, United States Patent No. 6,231,849.

Aoki relates to and describes a thrombin-binding substance useful as a medicine for curing thrombosis that may be prepared by treating human urine with calcium ion by adding

calcium carbonate thereto immediately before immuneadsorption column chromatography or during a pretreatment step.

Franklin et al. relates to and describes a pH-indicating cat litter including a carrier material treated with a pH-indicating dye such that when the cat litter is wetted with urine, the litter provides a visually detectable color transition if the pH of the urine is above a predetermined value. Disclosed as possible carrier materials are calcium carbonate chips, beads of water-insoluble polymer material, beads of polyethylene, polypropylene, polystyrene and the like, granite chips, wood chips, and cereal grains.

Japanese Patent Application No. 51034564 relates to and describes a fertilizer including animal feces and urine mixed with silicon dioxide, calcium carbonate, and sodium hydroxide in one embodiment, and calcined lime, silicon dioxide, aluminum hydroxide, ferric oxide, magnesium oxide, and sodium ligninsulphonate, sodium tripolyphosphate, or calcium stearate in a second embodiment.

Schiller relates to and describes a simulated seminal fluid that includes specific odiferous chemical compounds comprised of 1-Methyl Pyrrolidine, 1-Methyl-2-Pyrrolidine Methanol, 1-Methyl-2-Pyrrolidine Ethanol, Pyrrolidine and 2-Pyrrolidone, either alone or in various combinations with one another. These chemical compounds are employed in a suitable medium, which may include water or deer or other big game urine, and may be further mixed with certain specified materials and coloring agents that impart to the medium a color that simulates seminal fluid, such materials and coloring agents being listed in column 3, lines 34-47 of Schiller and including calcium carbonate.

Furthermore, Applicant submits, on even date herewith, an additional reference, Novotny, et al., United States Patent No. 5,252,326, issued October 12, 1993, which was recently

identified in a co-pending application of Applicant. A Supplemental Information Disclosure Statement of even date is also filed herewith identifying this reference. Novotny teaches the use of certain pheromones derived from animal products to repel animals. The use of the pheromones from dominant members of the target's own species is utilized to form the deterrent material. No attraction function is disclosed.

None of the references cited by the Examiner teach or suggest an animal attractant or repellant composition "consisting essentially of: one or more granular, dry form carrier materials selected from the group consisting of sand, clay, talc, gypsum, vermiculite and psyllium husks; and one or more animal products mixed with said one or more carrier materials" as recited in amended claim 11 and new claim 33 (emphasis added). Similarly, none of the references cited by the Examiner teaches or suggests a method of attracting or repelling animals, comprising "obtaining a composition consisting essentially of: (i) one or more granular, dry form carrier materials selected from the group consisting of sand, clay, talc, gypsum, vermiculite, psyllium husks, and soil; and (ii) one or more animal products mixed with said one or more carrier materials; and spreading said composition over an area to which said animals are desired to be attracted or from which said animals are desired to be repelled" as recited in new claims 30, 33 and 39 (emphasis added). Accordingly, Applicant respectfully submits that amended claim 11 and new claims 30, 33 and 39, and the claims depending therefrom, are allowable over the cited references.

III. Double Patenting Rejection

In the March 15, 2004 Office Action, the Examiner rejected claims 11-13 and 16-21 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of United States Patent No. 6,149,901. In connection therewith, the Examiner

stated that the rejected claims, although not identical to the claims of the '901 patent, are not patentably distinct from the claims of the '901 patent because both are drawn to a composition that contains calcium carbonate and animal urine. Applicant respectfully submits that this rejection is no longer applicable in light of the fact that claims directed to the species of the present invention including calcium carbonate are no longer being pursued in the present application. Thus, Applicant believes that there is no need at the present time to file a terminal disclaimer as suggested by the Examiner, and respectfully requests that the Examiner's rejection be withdrawn.

CONCLUSION

Based on the foregoing remarks, Applicant respectfully submits that claims 11, 12, 13, 16, 17, 21, 30, 31 and 32 are in condition for allowance. If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,

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